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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Computer III Further Remand Proceedings
Bell Operating Company
Provision of Enhanced Services

1998 Biennial Regulatory Review —
Review of *Computer III* and ONA
Safeguards and Requirements

CC Docket No. 95-20

CC Docket No. 98-10

REPLY COMMENTS
of the
GENERAL SERVICES ADMINISTRATION

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April 23, 1998

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Summary

GSA urges the Commission to place little weight on claims by the local exchange carriers that structural separations and Comparably Efficient Interconnection ("CEI") plans are too costly. Structural separations is more efficient for regulators and users. Furthermore, requirements for approved CEI plans will not delay the introduction of new enhanced services.

As GSA explained in its previous Comments, the current regulatory, technological, and marketplace conditions justify structural separations for the activities of the Bell Operating Companies ("BOCs") in providing information services. The BOCs market their own information services while they are the only firms that can provide facilities needed by independent firms to compete with them.

Structural separations is justified as long as the BOCs have this market power. Structural separation is an effective safeguard because it eliminates the need for difficult and arbitrary cost allocations, and thereby reduces the opportunities for cross-subsidy. Also, the Commission should continue the requirements for filing and approval of CEI plans that provide information needed by regulators and users for efficient operation of competitive markets.

Finally, GSA agrees with recommendations by Internet service providers and other end users that users other than carriers should have access to unbundled network elements. Extending access to information service providers and other end users will help to counterbalance the BOCs' market power and provide users with additional alternatives for new services.

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**REPLY COMMENTS
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GENERAL SERVICES ADMINISTRATION**

The General Services Administration ("GSA") submits these Reply Comments on behalf of the customer interests of all Federal Executive Agencies ("FEAs") in response to the Commission's Further Notice Of Proposed Rulemaking released on January 30, 1998.¹ In the Further Notice, the Commission requested comments and replies on the need for structural separations of enhanced services offered by Bell Operating Companies ("BOCs"). The Commission also requested comments on additional issues concerning Open Network Architecture ("ONA").

I. INTRODUCTION

The Telecommunications Act of 1996 opened the door to major changes in the telecommunications industry, with mandatory interconnection, unbundling, and resale

¹ CC Docket Nos. 95-20 and 98-10, Further Notice of Proposed Rulemaking, released January 30, 1998 ("Further Notice").

of local exchange services.² In view of the substantial structural changes in the industry and the rapidly expanding demands for information services, the Commission convened this proceeding to revisit the needs for regulatory safeguards concerning information services provided by the largest incumbent local exchange carriers.

On March 28, 1998, GSA submitted Comments addressing the need for structural separations and Comparably Efficient Interconnection ("CEI") plans.³ A diverse group of parties also submitted comments:

- an association of large end users of telecommunications and information services;
- a state regulatory agency;
- 5 local exchange carriers and an association representing the interests of these carriers;
- 8 additional carriers, including interexchange carriers, resellers, and wireless carriers; and
- 10 Internet service providers, firms providing other enhanced services and associations of these organizations.

In these Reply Comments, GSA responds to the positions advanced by these parties.

II. REGULATORY, TECHNOLOGICAL AND MARKETPLACE CONDITIONS JUSTIFY STRUCTURAL SEPARATIONS AND CONTINUATION OF REPORTING REQUIREMENTS.

Enhanced services extend the capabilities of switched telecommunications networks by providing voice mail, E-mail, voice store-and-forward, data processing, access to on-line databases, and other services for commercial organizations, government agencies, and private individuals. Initially, these services were offered by

² Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, amending the Communications Act of 1934, 47 U.S.C. § 151 *et seq.* ("Telecommunications Act").

³ CC Docket Nos. 95-20 and 98-10, Comments of GSA, March 27, 1998.

telephone companies. However, specialized groups of firms called enhanced service providers ("ESPs") or information service providers ("ISPs") have also become major participants in these markets.

GSA explained in its initial Comments that regulatory, technological and marketplace developments do not diminish the need for structural separations of the activities of BOCs in providing enhanced services.⁴ Structural separations will foster open competition between the firms providing enhanced services and the BOCs. Also, structural separations will help ensure that users of the BOCs' other services are not subsidizing their competitive ventures.

From the FEAs' vantage point as end users, competition is not sufficiently intense or pervasive to depend on non-structural safeguards. Information services and basic telephone services are interrelated from operational and marketing perspectives. Structural separations are necessary to ensure that the revenues and costs for the unregulated information services can be distinguished from the revenues and costs for the company's regulated services. As CompuServe Network Services explains, structural separations eliminates the need for difficult and arbitrary cost allocations, and thereby reduces the opportunities for cross-subsidy.⁵

Almost all of the parties submitting comments, except the BOCs themselves, express the need for continuing safeguards. Several parties agreed precisely with GSA that structural separations will provide the best protection for other carriers and end users. MCI Telecommunications expresses the need for significant safeguards in a succinct way.

⁴ *Id.*, pp. 3-6.

⁵ Comments of CompuServe Network Services, p. 7.

- The BOCs cannot show significant benefits to their own information services from structural integration.⁶
- These companies cannot demonstrate that public benefits are abridged with structural separations.⁷
- Elimination of structural separations is not required for consumers to enjoy the benefits of "one-stop shopping" for local exchange and information services.⁸

End users submitting comments expressed similar positions in support of effective safeguards.

In its comments, the Ad Hoc Telecommunications Users Committee explained that neither access competition nor the growth of the information services industry is sufficient to curb anti-competitive activity by the large incumbent carriers.⁹ From their viewpoint as end users, Ad Hoc reports that competition is primarily in "niche markets."¹⁰ The incumbent carriers still command overwhelming market shares in almost all areas. Even the increased market power of information services providers has not been sufficient to quell the threat of anti-competitive activity by the BOCs.¹¹

In addition to recommending structural separations, GSA advocated that the Commission continue to require the BOCs to file CEI plans and to obtain the Common Carrier Bureau's approval of those proposals.¹² As GSA explained, the CEI plans provide detailed information on functionality, costs, and schedules for service

⁶ Comments of MCI Telecommunications Corp. ("MCI"), p. 23.

⁷ *Id.*, p. 31.

⁸ *Id.*, p. 41

⁹ Comments of Ad Hoc Telecommunications Users Committee ("Ad Hoc"), p. 3.

¹⁰ *Id.*, p. i.

¹¹ *Id.*, p. 3.

¹² Comments of GSA, pp. 6-9.

availability to help ensure that the BOCs are not discriminating against independent enhanced services providers.¹³

Many commenting parties concurred with GSA that the BOCs should continue to file CEI plans. For example, the focus of the comments by AirTouch Paging is that CEI plans are vital to protect against anti-competitive conduct by BOCs in offering enhanced services.¹⁴ AirTouch strongly urges the Commission to retain the approval requirements for CEI plans.¹⁵ AirTouch effectively dramatizes the importance of the CEI requirements through a description of actions by a BOC offering Pager Notification service.¹⁶

III. THE COMMISSION SHOULD NOT CREDIT CLAIMS BY LOCAL CARRIERS THAT STRUCTURAL SEPARATIONS AND CEI PLANS ARE TOO COSTLY.

A. Structural separations is more efficient for regulators and users.

The BOCs assert in their comments that the costs of structural separations are substantial. These claims are greatly exaggerated, and not justified.

For example, SBC Communications asserts that the costs are "significant — if not fatal" in the current competitive environment.¹⁷ This carrier contends — without quantitative evidence — that structural separations would require "investment in duplicate facilities and increased administrative and overhead costs."¹⁸ Furthermore,

¹³ *Id.*, p. 7.

¹⁴ Comments of AirTouch Paging ("AirTouch"), p. 3.

¹⁵ *Id.*, p. 4.

¹⁶ *Id.*

¹⁷ Comments of SBC Communications, Inc., p. 17.

¹⁸ *Id.*, p. 18.

the carrier claims that structural separations would create "transaction costs arising from the decision to replace an integrated process that delivers retail consumer services with a corporate structure requiring that the production and sale of intermediate (or "input") goods and services be subsequently altered or transformed before delivery to the retail market."¹⁹

Bell Atlantic paints a similar picture. This carrier states that structural separations would entail "enormous costs" for the Bell companies, leading to higher prices for existing offerings and deferral of investment in new innovative services.²⁰ With its comments, Bell Atlantic included a declaration by the Director responsible for the company's residential voice messaging services. This individual contends that the inability to market and maintain voice messaging services through the same delivery channels as employed for local exchange services will cause increases of 20 to 25 percent in the company's charges for highly competitive voice mail services.²¹

The Commission should not credit these claims. As the Commission acknowledges in its Further Notice, the Telecommunications Act requires structural separations for BOCs offering in-region interLATA information services.²² Indeed, as parties have observed, it is likely that the substantial benefits of structural separations motivated Congress to rely substantially on this safeguard in constructing the legislation to open new markets to the BOCs for the first time.²³

¹⁹ *Id.*

²⁰ Comments of Bell Atlantic on Further Notice, p. 8.

²¹ *Id.*, Declaration of Richard J. McCusker, Jr., para. 2.

²² Comments of GSA, p. 3 and fn. 6.

²³ Comments of America Online, Inc., p. 12.

Structural separations, properly implemented, should not cause substantial additional costs for the BOCs. These carriers are already required by the Telecommunications Act to establish and operate separate affiliates for interLATA information services. With these affiliates in place, additional investments, overheads and "transaction costs" for the corresponding intraLATA services should be small.

As America Online explains, a separate subsidiary would in fact be administratively efficient, because it would reduce the ability of BOCs to evade legitimate regulation and oversight by arbitrage between interLATA and intraLATA services.²⁴ Even if there is an increase in the costs to BOCs, there are clearly reductions in the costs to regulators and others. Regulators can more efficiently detect and address improper attempts to shift costs, and also detect patterns of discrimination, if information services are provided through a separate subsidiary.

B. Requirements for approved CEI plans will not delay introduction of new enhanced services.

The BOCs also contend that the requirement for CEI plans detailing their proposed information services significantly delays the introduction of new services that will be valuable for consumers. As end users of both local exchange and information services, the FEAs urge the Commission to reject this claim and continue the requirements for filing and approval of CEI plans.

With its comments, Ameritech submitted a study containing a model purporting to demonstrate that the requirements for CEI plans had a chilling effect on the introduction of new services.²⁵ Other BOCs, including SBC Communications and Bell Atlantic, also assert that the filing requirements cause unreasonable delays in the

²⁴ *Id.*, p. 13.

²⁵ Comments of Ameritech, "The Effects of Regulation on the Innovation and Introduction of New Telecommunications Services" ("Ameritech Study"), March 2, 1998.

introduction of new services, and that CEI requirements retard innovation and impede open competition.²⁶

The Ameritech model is based on data for filings and waiver requests to the Commission in the period 1987 through 1997.²⁷ During a middle interval — specifically from 1993 through 1995 — CEI plans were not required. However, at the end of that period plans for services introduced during the interim were filed *en masse*, so that the number of new services could be tabulated in retrospect.

Ameritech's approach was to fit a statistical model to the service introduction counts from before and after the 1993 to 1995 period, and then compare the model's predictions of the number of services that should have been introduced during that period with the number that were actually introduced.²⁸ To summarize the findings, the model predicted that only 17 new services would have been introduced in the 1993 through 1995 interval if CEIs had been required.²⁹ The actual total was 27 new services.³⁰ Thus, according to Ameritech, consumers received the benefits of 10 additional services. By extrapolation (again according to Ameritech) consumers would receive the benefits of additional services starting in 1998 if the requirements for CEI plans are eliminated for the future.

The Ameritech study draws too broad a conclusion based on too little data. The number of "new services" that BOCs would seek to introduce in any time period depends on many factors in addition to disclosure requirements. These factors

²⁶ Comments of SBC Communications, pp. 27-330; and Comments of Bell Atlantic on Further Notice, pp. 11-13.

²⁷ Ameritech Study, p. 4.

²⁸ *Id.*, p. 5.

²⁹ *Id.*, p. 7.

³⁰ *Id.*

include the ability of the BOCs' engineers to develop new services, the probable consumer demand for new services, the estimated profitability of new offerings, and the actions of competitors, including other carriers as well as independent enhanced services providers. With so many complex and interrelated variables, the Commission should not accept Ameritech's study as evidence that CEI requirements will limit future service offerings.

Any delays in introduction of new services by the BOCs must be considered in the context of the leverage that these firms can exercise in controlling bottleneck facilities needed by independent enhanced service providers to compete with them. In its comments, Time Warner Communications reports that attempts by the BOCs' to preserve local bottlenecks and to use these bottlenecks to establish stronger positions for their affiliated information service providers is demonstrated in the carriers' Section 706 petitions to the Commission.³¹ Time Warner notes that in those petitions, BOCs have requested relief from the obligations to unbundle or offer on a wholesale basis the high speed data services that independent firms need to provide services to their own customers.³² For example, Time Warner notes that both Ameritech and Bell Atlantic have requested the flexibility to provide interLATA high speed data services outside of applicable price-cap and separate-affiliate rules.³³

Information contained in the CEI plans helps to maintain a "level playing field" in the competition between BOCs and independent information service providers. While America Online supports the goal of simplifying the regulatory process, the company explains that independent providers must have access to the information needed to

³¹ Comments of Time Warner Communications Holdings, p. 6.

³² *Id.*, p. 7.

³³ *Id.*

identify and employ network functionalities in a non-discriminatory fashion.³⁴ According to America Online, information needs include descriptions of services available to independent providers, technical and service standards, and the BOCs' plans to deploy new capabilities.³⁵

CEIs provide information necessary to help ensure that BOCs do not discriminate against ISPs by providing inadequate connections or inferior support services. As GSA explained, a CEI plan details how a BOC proposes to comply with nine "equal access" parameters, including unbundling of basic services, end user access, transport costs, maintenance, installation and repair.³⁶ If CEI filings are eliminated, this basic information would not be available to regulators, to competitors seeking access, or to end users of the BOCs' services. The competitive process will suffer if this information is not available. GSA urges the Commission not to abandon CEI filing requirements.

**IV. INTERNET SERVICE PROVIDERS AND OTHER END USERS
SHOULD HAVE ACCESS TO UNBUNDLED NETWORK
ELEMENTS.**

**A. Extending access to unbundled network elements to end
users will help to counterbalance the BOCs' market
power.**

Information service providers and other end users responded to the Further Notice with a recommendation that will help to foster competition for enhanced services. These parties provided affirmative responses to the Commission's question on whether it should give information service providers the rights of access to

³⁴ *Id.*

³⁵ *Id.*

³⁶ Comments of GSA, p. 7.

unbundled network elements ("UNEs") that are conferred to interconnected common carriers by the Section 251 of the Telecommunications Act.³⁷

Ad Hoc explains that end-user access to BOC network functionalities will help to curb the market power of these firms.³⁸ Also, Ad Hoc emphasizes that extending the availability of UNEs to end users should not pose any significant costs on the incumbent local exchange carriers, because these firms are already required by the Telecommunications Act to provide UNEs to other carriers.³⁹

In its Further Notice, the Commission notes that users such as ISPs can take advantage of the requirement in the Telecommunications Act for unbundling either by partnering or teaming with CLECs or by becoming certified telecommunications carriers themselves.⁴⁰ BOCs endorsed this approach in their comments. For example, BellSouth states that ISPs can obtain all of the benefits of interconnection and unbundling by becoming a telecommunications carrier and assuming the associated obligations, by partnering or teaming with a telecommunications provider who has such rights, or simply by acquiring the services of a CLEC.⁴¹

As Ad Hoc notes, these approaches are not satisfactory.⁴² Teaming would confer to end users the "administrative and regulatory obligations (not to mention the costs) entailed in becoming a telecommunications carrier.⁴³ Fundamentally, ISPs and

³⁷ Further Notice, paras. 94-96.

³⁸ Comments of Ad Hoc, p. 11.

³⁹ *Id.*

⁴⁰ Further Notice, paras. 33 and 95.

⁴¹ Comments of BellSouth Corporation, p. 28.

⁴² Comments of Ad Hoc., p. 12.

⁴³ *Id.*

other end users should not be compelled to become carriers to have access to network functionalities that would help to satisfy market needs.

GSA concurs with Ad Hoc's recommendation that in reaching decisions on the issues of this proceeding, more weight should be given to the needs of users and less weight to the claims of carriers.⁴⁴ Experience shows that market needs are best identified and met when users are given access to the network comparable to that afforded carriers. Therefore, the Commission should give non-carriers access to unbundled network features and functionalities.

B. Internet service providers will be able to provide alternative configurations for their own customers with unbundled network elements.

A wide spectrum of firms offering information services believe that access to BOCs' network elements will help them to provide better services to their own customers. Many of these firms are smaller businesses. For example, KWOM Communications, a local Internet Service Provider located in the suburbs of Chicago, stated that all ISPs should be able to enjoy the full benefits of unbundling enumerated for carriers in Section 251 of the Telecommunications Act.⁴⁵ KWOM explained that this would be a cost-effective way to assure non-discriminatory access to elements of the telecommunications infrastructure controlled by BOCs that they need to provide their own services to the public.⁴⁶

Other retail Internet service providers explained that while some unbundling would be helpful, they do not require the full extent of unbundling specified in Section 251 of the Telecommunications Act. One group of about 20 ISPs serving about

⁴⁴ *Id.*, p. ii.

⁴⁵ Comments of KWOM Communications, Inc., pp. 1-3.

⁴⁶ *Id.*, Cover Letter.

100,000 customers in various communities in several states stated that its members only need a very simple, very basic service — perhaps best called “unswitched clean copper” — at non-discriminatory, cost-based rates.⁴⁷ ISPs and their customers would attach xDSL customer premises equipment (“CPE”) to each end of the circuit.⁴⁸ The ISPs would then use this equipment in conjunction with basic communications service to offer high bandwidth access to their subscribers.⁴⁹

In a separate submission, one of the firms participating in the Joint ISP Comments explained that many consumers will not receive the benefits of competition for high bandwidth access simply by conferring the rights of access to unbundled network elements to local exchange carriers competing with BOCs.⁵⁰ While competitive local exchange carriers (“CLECs”) theoretically are an alternative source of services for end users, these firms are not providing services in smaller communities and rural areas.⁵¹

Because of the greater costs of service per subscriber, it will be some time before there is vigorous competition in many less densely populated places. In the meanwhile, the Commission should ensure that as many types of users as possible have access to unbundled elements that can be used to provide services to the public. Extending the rights to unbundled network elements to ISPs is an important step in meeting this need.

⁴⁷ Joint Comments of APK Net, Ltd., Clarity Connect, Inc., Cybercom, Cyber Warrior, Inc., Double D Network Services, Inc., Erinet, Greatland Internet Services, Inc., Helicon Online, L.P., Infinet, Infohouse, Inforamp, Internet Connect Company, MTP LLC d.b.a. Javanet, Proaxis Communications, Inc., Rockbridge Global Village, Shrevenet, Inc., Within Technology, Inc., and Zoomnet, Retail Internet Service Providers (“Joint ISP Comments”).

⁴⁸ *Id.*, p. 2.

⁴⁹ *Id.*

⁵⁰ Comments of Helicon Online, L.P., p. 2.

⁵¹ *Id.*, p. 3.

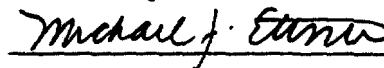
V. CONCLUSION

As a major user of telecommunications services, GSA urges the Commission to require structural separations for enhanced services provided by BOCs, to continue the requirements for these companies to obtain approved Comparatively Efficient Interconnection plans, and to allow information service providers and other end users access to unbundled network elements.

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